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110TH CONGRESS
1ST SESSION

H. R. 2585

To amend title XVIII of the Social Security Act to modify Medicare physician reimbursement policies to ensure a future physician workforce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2007

Mr. BURGESS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend title XVIII of the Social Security Act to modify Medicare physician reimbursement policies to ensure a future physician workforce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Ensuring the Future Physician Workforce Act of 2007".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PAYMENT AND QUALITY INCENTIVES

Sec. 101. Resetting to 2007 the base year for application of sustainable growth rate formula; elimination of sustainable growth rate formula in 2010.
Sec. 102. Quality incentives.

TITLE II—HEALTH INFORMATION TECHNOLOGY INCENTIVES

Sec. 201. Health information technology (HIT) payment incentive.
Sec. 202. Safe harbors to antikickback, civil penalties, and criminal penalties for provision of health information technology and training services.
Sec. 203. Exception to limitation on certain physician referrals (under Stark) for provision of Health Information Technology and training services to health care professionals.
Sec. 204. Rules of construction regarding use of consortia.

TITLE III—INFORMATION AND REPORTS

Sec. 301. Information for physicians on Medicare billings.
Sec. 302. Information for beneficiaries on Medicare expenditures.
Sec. 303. Collection of data on Medicare savings from physicians' services diversion.
Sec. 304. Trustees' ongoing examination of Medicare funding.
Sec. 305. Independent study on Medicare Relative Value Unit Scale Update Committee (RUC) process.
Sec. 306. Study of reporting requirements on health care disparities.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Acceleration of nationwide implementation of audit contractor program.

TITLE I—PAYMENT AND QUALITY INCENTIVES

SEC. 101. RESETTING TO 2007 THE BASE YEAR FOR APPLICATION OF SUSTAINABLE GROWTH RATE FORMULA; ELIMINATION OF SUSTAINABLE GROWTH RATE FORMULA IN 2010.

(a) IN GENERAL.—Section 1848(d)(4) of the Social Security Act (42 U.S.C. 1395w–4(d)(4)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (B), by striking "subparagraph (D)" and inserting "subparagraphs (D) and (G)"; and

(B) by adding at the end the following new subparagraph:

"(G) REBASING TO 2007 FOR UPDATE ADJUSTMENTS BEGINNING WITH 2008.—In determining the update adjustment factor under subparagraph (B) for 2008 and 2009—

"(i) the allowed expenditures for 2007 shall be equal to the amount of the actual expenditures for physicians' services during 2007;

"(ii) subparagraph (B)(ii) shall not apply to 2008; and

"(iii) the reference in subparagraph (B)(ii)(I) to 'April 1, 1996' shall be treated, beginning with 2009, as a reference to 'January 1, 2007'."; and

(2) by adding at the end the following new paragraph:

"(8) UPDATING BEGINNING WITH 2010.—The update to the single conversion factor for each year beginning with 2010 shall be the percentage increase

in the MEI (as defined in section 1842(i)(3)) for that year.".

(b) CONFORMING SUNSET.—Section 1848(f)(1)(B) of such Act is amended by inserting "(ending with 2008)" after "each succeeding year".

SEC. 102. QUALITY INCENTIVES.

(a) EXTENSION OF CURRENT QUALITY REPORTING SYSTEM AND TRANSITIONAL BONUS INCENTIVE PAYMENTS FOR 2008 AND 2009.—

(1) EXTENSION OF QUALITY REPORTING SYSTEM THROUGH 2009.—Section 1848(k) of the Social Security Act (42 U.S.C. 1395w(k)) is amended—

(A) in the heading of paragraph (2)(B), by inserting "AND 2009" after "2008"; and

(B) in paragraphs (2)(B) and (4), by inserting "and 2009" after "2008" each place it appears.

(2) EXTENSION OF AND INCREASE IN BONUS PAYMENTS FOR 2008 AND 2009.—Section 101(c) of the Medicare Improvement and Extension Act of 2006 (division B of Public Law 109–432) is amended—

(A) in the heading, by inserting ", 2008, AND 2009" after "2007";

(B) in paragraph (1), by inserting "(or 3 percent in the case of reporting periods beginning after December 31, 2007)" after "1.5 percent";

(C) in paragraph (4), by striking "single consolidated payment." and inserting "single consolidated payment for each reporting period. Such payment shall be made for a reporting period within 30 days after the date that required information has been submitted with respect to claims for such period."; and

(D) in paragraph (6)(C), by striking "the period beginning on July 1, 2007, and ending on December 31, 2007" and inserting "each of the five consecutive 6-month periods beginning on July 1, 2007, and ending on December 31, 2009".

(b) ESTABLISHMENT OF NEW QUALITY INCENTIVE SYSTEM EFFECTIVE IN 2010.—

(1) IN GENERAL.—Section 1848 of the Social Security Act (42 U.S.C. 1395w) is amended by striking subsection (k) and inserting the following:

"(k) PHYSICIAN QUALITY INCENTIVE SYSTEM.—

"(1) IN GENERAL.—The Secretary shall establish a reporting system (in this subsection referred

to as the 'Physician Quality Incentive System' or 'System') for quality measures relating to physicians' services that focuses on disease-specific high cost conditions. Not later than January 1, 2010, the Secretary shall—

"(A) identify the 10 health conditions that have the highest proportion of spending under this part, due in part to a gap in patient care, and for which reporting measures are feasible; and

"(B) adopt reporting measures on these conditions, based on measures developed by the Physician Consortium of the American Medical Association.

"(2) ADD-ON PAYMENT.—

"(A) IN GENERAL.—The Secretary shall provide, in a form and manner specified by the Secretary, for a bonus or other add-on payment for physicians that submit information required on the conditions identified under paragraph (1).

"(B) AMOUNT.—Such a bonus or add-on payment shall be equal to 1.0 percent of the payment amount otherwise computed under this section.

"(C) TIMELY PAYMENTS.—Such a payment shall be made, with respect to information submitted for a month, by not later than 30 days after the date the information is submitted for such month.

"(D) DEDUCTIBLE AND COINSURANCE NOT APPLICABLE.—Such payment shall not be subject to the deductible or coinsurance otherwise applicable to physicians' services under this part.

"(E) USE OF REGISTRY.—In carrying out subparagraph (A), the Secretary shall allow the submission of the required information through an appropriate medical registry identified by the Secretary.

"(3) MONITORING.—The Secretary shall monitor and report to Congress on an annual basis physician participation in the Physician Quality Incentive System, administrative burden encountered by participants, barriers to participation, as well as savings accrued to the Medicare program due to quality care improvements based on measures established under the Physician Quality Incentive System.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to payment for physi-

cians' services for services furnished in years beginning with 2010.

TITLE II—HEALTH INFORMATION TECHNOLOGY INCENTIVES

SEC. 201. HEALTH INFORMATION TECHNOLOGY (HIT) PAYMENT INCENTIVE.

Section 1848 of the Social Security Act is amended by adding at the end the following new subsection:

"(m) HEALTH INFORMATION TECHNOLOGY PAYMENT INCENTIVES.—

"(1) STANDARDS.—Not later than January 1, 2008, the Secretary shall create standards for the certification of health information technology used in the furnishing of physicians' services.

"(2) ADD-ON PAYMENT.—The Secretary shall provide for a bonus or other add-on payment for physicians that implement a health information technology system that is certified under paragraph (1). Such a bonus shall be equal to 3.0 percent of the payment amount otherwise computed under this section, except that—

"(A) in no case may total of such bonus and the bonus provided under subsection (k)(2) exceed 6 percent of such payment amount; and

"(B) such payments with respect to a physician shall only apply to physicians' services furnished during a period of 36 consecutive months beginning with the first day of the first month after the date of such certification.

The bonus payment under this paragraph shall not be subject to the deductible or coinsurance otherwise applicable to physicians' services under this part.".

SEC. 202. SAFE HARBORS TO ANTIKICKBACK, CIVIL PENALTIES, AND CRIMINAL PENALTIES FOR PROVISION OF HEALTH INFORMATION TECHNOLOGY AND TRAINING SERVICES.

(a) FOR CIVIL PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) is amended—

(1) in subsection (b), by adding at the end the following new paragraph:

"(4) For purposes of this subsection, inducements to reduce or limit services described in paragraph (1) shall not include the practical or other advantages resulting from health information technology or related installation, maintenance, support, or training services."; and

(2) in subsection (i), by adding at the end the following new paragraph:

"(8) The term 'health information technology' means hardware, software, license, right, intellectual

property, equipment, or other information technology (including new versions, upgrades, and connectivity) designed or provided primarily for the electronic creation, maintenance, or exchange of health information to better coordinate care or improve health care quality, efficiency, or research.''.

(b) FOR CRIMINAL PENALTIES.—Section 1128B of such Act (42 U.S.C. 1320a–7b) is amended—

(1) in subsection (b)(3)—

(A) in subparagraph (G), by striking ''and'' at the end;

(B) in the subparagraph (H) added by section 237(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2213)—

(i) by moving such subparagraph 2 ems to the left; and

(ii) by striking the period at the end and inserting a semicolon;

(C) in the subparagraph (H) added by section 431(a) of such Act (117 Stat. 2287)—

(i) by redesignating such subparagraph as subparagraph (I);

(ii) by moving such subparagraph 2 ems to the left; and

(iii) by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following new subparagraph:

"(J) any nonmonetary remuneration (in the form of health information technology, as defined in section 1128A(i)(8), or related installation, maintenance, support or training services) made to a person by a specified entity (as defined in subsection (g)) if—

"(i) the provision of such remuneration is without an agreement between the parties or legal condition that—

"(I) limits or restricts the use of the health information technology to services provided by the physician to individuals receiving services at the specified entity;

"(II) limits or restricts the use of the health information technology in conjunction with other health information technology; or

"(III) conditions the provision of such remuneration on the referral of patients or business to the specified entity;

"(ii) such remuneration is arranged for in a written agreement that is signed by the parties involved (or their representatives) and that specifies the remuneration solicited or received (or offered or paid) and states that the provision of such remuneration is made for the primary purpose of better coordination of care or improvement of health quality, efficiency, or research; and

"(iii) the specified entity providing the remuneration (or a representative of such entity) has not taken any action to disable any basic feature of any hardware or software component of such remuneration that would permit interoperability."; and

(2) by adding at the end the following new subsection:

"(g) SPECIFIED ENTITY DEFINED.—For purposes of subsection (b)(3)(J), the term 'specified entity' means an entity that is a hospital, group practice, prescription drug plan sponsor, a Medicare Advantage organization, or any other such entity specified by the Secretary, considering the goals and objectives of this section, as well as the goals to better coordinate the delivery of health care and to pro-

mote the adoption and use of health information technology.''.

(c) EFFECTIVE DATE AND EFFECT ON STATE LAWS.—

(1) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date that is 120 days after the date of the enactment of this Act.

(2) PREEMPTION OF STATE LAWS.—No State (as defined in section 1101(a) of the Social Security Act (42 U.S.C. 1301(a)) for purposes of title XI of such Act) shall have in effect a State law that imposes a criminal or civil penalty for a transaction described in section 1128A(b)(4) or section 1128B(b)(3)(J) of such Act, as added by subsections (a)(1) and (b), respectively, if the conditions described in the respective provision, with respect to such transaction, are met.

(d) STUDY AND REPORT TO ASSESS EFFECT OF SAFE HARBORS ON HEALTH SYSTEM.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the impact of each of the safe harbors described in paragraph (3). In particular, the study shall examine the following:

(A) The effectiveness of each safe harbor in increasing the adoption of health information technology.

(B) The types of health information technology provided under each safe harbor.

(C) The extent to which the financial or other business relationships between providers under each safe harbor have changed as a result of the safe harbor in a way that adversely affects or benefits the health care system or choices available to consumers.

(D) The impact of the adoption of health information technology on health care quality, cost, and access under each safe harbor.

(2) REPORT.—Not later than three years after the effective date described in subsection (c)(1), the Secretary of Health and Human Services shall submit to Congress a report on the study under paragraph (1).

(3) SAFE HARBORS DESCRIBED.—For purposes of paragraphs (1) and (2), the safe harbors described in this paragraph are—

(A) the safe harbor under section 1128A(b)(4) of such Act (42 U.S.C. 1320a–7a(b)(4)), as added by subsection (a)(1); and

(B) the safe harbor under section 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a–7b(b)(3)(J)), as added by subsection (b).

SEC. 203. EXCEPTION TO LIMITATION ON CERTAIN PHYSICIAN REFERRALS (UNDER STARK) FOR PROVISION OF HEALTH INFORMATION TECHNOLOGY AND TRAINING SERVICES TO HEALTH CARE PROFESSIONALS.

(a) IN GENERAL.—Section 1877(b) of the Social Security Act (42 U.S.C. 1395nn(b)) is amended by adding at the end the following new paragraph:

"(6) INFORMATION TECHNOLOGY AND TRAINING SERVICES.—

"(A) IN GENERAL.—Any nonmonetary remuneration (in the form of health information technology or related installation, maintenance, support or training services) made by a specified entity to a physician if—

"(i) the provision of such remuneration is without an agreement between the parties or legal condition that—

"(I) limits or restricts the use of the health information technology to services provided by the physician to

individuals receiving services at the specified entity;

"(II) limits or restricts the use of the health information technology in conjunction with other health information technology; or

"(III) conditions the provision of such remuneration on the referral of patients or business to the specified entity;

"(ii) such remuneration is arranged for in a written agreement that is signed by the parties involved (or their representatives) and that specifies the remuneration made and states that the provision of such remuneration is made for the primary purpose of better coordination of care or improvement of health quality, efficiency, or research; and

"(iii) the specified entity (or a representative of such entity) has not taken any action to disable any basic feature of any hardware or software component of such remuneration that would permit interoperability.

"(B) HEALTH INFORMATION TECHNOLOGY DEFINED.—For purposes of this paragraph, the term 'health information technology' means hardware, software, license, right, intellectual property, equipment, or other information technology (including new versions, upgrades, and connectivity) designed or provided primarily for the electronic creation, maintenance, or exchange of health information to better coordinate care or improve health care quality, efficiency, or research.

"(C) SPECIFIED ENTITY DEFINED.—For purposes of this paragraph, the term 'specified entity' means an entity that is a hospital, group practice, prescription drug plan sponsor, a Medicare Advantage organization, or any other such entity specified by the Secretary, considering the goals and objectives of this section, as well as the goals to better coordinate the delivery of health care and to promote the adoption and use of health information technology.".

(b) EFFECTIVE DATE; EFFECT ON STATE LAWS.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that

is 120 days after the date of the enactment of this Act.

(2) PREEMPTION OF STATE LAWS.—No State (as defined in section 1101(a) of the Social Security Act (42 U.S.C. 1301(a)) for purposes of title XI of such Act) shall have in effect a State law that imposes a criminal or civil penalty for a transaction described in section 1877(b)(6) of such Act, as added by subsection (a), if the conditions described in such section, with respect to such transaction, are met.

(c) STUDY AND REPORT TO ASSESS EFFECT OF EXCEPTION ON HEALTH SYSTEM.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the impact of the exception under section 1877(b)(6) of such Act (42 U.S.C. 1395nn(b)(6)), as added by subsection (a). In particular, the study shall examine the following:

(A) The effectiveness of the exception in increasing the adoption of health information technology.

(B) The types of health information technology provided under the exception.

(C) The extent to which the financial or other business relationships between providers

under the exception have changed as a result of the exception in a way that adversely affects or benefits the health care system or choices available to consumers.

(D) The impact of the adoption of health information technology on health care quality, cost, and access under the exception.

(2) REPORT.—Not later than three years after the effective date described in subsection (b)(1), the Secretary of Health and Human Services shall submit to Congress a report on the study under paragraph (1).

SEC. 204. RULES OF CONSTRUCTION REGARDING USE OF CONSORTIA.

(a) APPLICATION TO SAFE HARBOR FROM CRIMINAL PENALTIES.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)) is amended by adding after and below subparagraph (J), as added by section 203(b)(1), the following: "For purposes of subparagraph (J), nothing in such subparagraph shall be construed as preventing a specified entity, consistent with the specific requirements of such subparagraph, from forming a consortium composed of health care providers, payers, employers, and other interested entities to collectively purchase and donate health information technology, or from

offering health care providers a choice of health information technology products in order to take into account the varying needs of such providers receiving such products.".

(b) APPLICATION TO STARK EXCEPTION.—Paragraph (6) of section 1877(b) of the Social Security Act (42 U.S.C. 1395nn(b)), as added by section 203(a), is amended by adding at the end the following new subparagraph:

"(D) RULE OF CONSTRUCTION.—For purposes of subparagraph (A), nothing in such subparagraph shall be construed as preventing a specified entity, consistent with the specific requirements of such subparagraph, from—

"(i) forming a consortium composed of health care providers, payers, employers, and other interested entities to collectively purchase and donate health information technology; or

"(ii) offering health care providers a choice of health information technology products in order to take into account the varying needs of such providers receiving such products.".

TITLE III—INFORMATION AND REPORTS

SEC. 301. INFORMATION FOR PHYSICIANS ON MEDICARE BILLINGS.

(a) IN GENERAL.—Section 1848 of the Social Security Act, as amended by section 201, is further amended by adding at the end the following new subsection:

"(n) ANNUAL REPORTING OF INFORMATION TO PHYSICIANS.—

"(1) IN GENERAL.—The Secretary shall annually report to each physician information on total billings by the physician (including laboratory tests and other items and services ordered by the physician) under this title. Such information shall be provided in a comparative format by code, weighting for practice size, number of Medicare patients treated, and relative number of Medicare beneficiaries in the geographical area.

"(2) CONFIDENTIALITY.—Information reported under paragraph (1) is confidential and shall not be disclosed to other than the physician to whom the information relates.".

(b) EFFECTIVE DATE.—The Secretary of Health and Human Services shall first provide for reporting of infor-

mation under the amendment made by subsection (a) for billings during 2007.

SEC. 302. INFORMATION FOR BENEFICIARIES ON MEDICARE EXPENDITURES.

(a) IN GENERAL.—Section 1804 of the Social Security Act is amended by adding at the end the following new subsection:

"(d) ANNUAL REPORT ON INDIVIDUAL RESOURCE UTILIZATION.—The Secretary shall provide for the reporting, on an annual basis, to each individual entitled to benefits under part A or enrolled under part B, on the amount of payments made to or on behalf of the individual under this title during the year involved. Such information shall be provided in a format that compares such amount with the average per capita expenditures in the region or area involved.".

(b) EFFECTIVE DATE.—The Secretary of Health and Human Services shall first provide for reporting of information under the amendment made by subsection (a) for payments made during 2007.

SEC. 303. COLLECTION OF DATA ON MEDICARE SAVINGS FROM PHYSICIANS' SERVICES DIVERSION.

(a) IN GENERAL.—The Secretary of Health and Human Services shall collect data on annual savings in

expenditures in the Medicare program due to physicians' services that resulted in hospital or in-patient diversion.

(b) REPORT.—The Secretary shall transmit to Congress annually a summary of the data collected under subsection (a).

SEC. 304. TRUSTEES' ONGOING EXAMINATION OF MEDICARE FUNDING.

(a) EXAMINATION BY BOARD OF TRUSTEES.—The Board of Trustees of the Federal Hospital Insurance Trust Fund and of the Federal Supplementary Medical Insurance Trust Fund shall monitor and examine the extent to which the different funding mechanisms under parts A, B, and D of title XVIII of the Social Security Act provide an appropriate alignment with the program goals of the respective parts. Such examination shall include an examination of each of the following:

(1) The extent to which, as volume of services increases in physician settings under such part B, there is a corresponding reduction in similar services provided in a hospital setting under such part A.

(2) The extent to which, as a result of increased coordination between physicians and the delivery of prescription drugs under such part D, particularly with respect to individuals with chronic conditions,

there will there be a decrease in hospitalizations under such part A.

(3) The extent to which other changes in physician or other health care practice results in a shifting of expenditures among the various parts.

(b) INCLUSION IN ANNUAL REPORTS.—In each annual report submitted to the Congress after the date of the enactment of this Act under section 1817(b)(2) or section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2), 1395t(b)(2)), such Board of Trustees shall include information on the matters described in subsection (a).

SEC. 305. INDEPENDENT STUDY ON MEDICARE RELATIVE VALUE UNIT SCALE UPDATE COMMITTEE (RUC) PROCESS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall enter into an arrangement with an appropriate independent entity to conduct a study of price inputs and relative values for physicians' services recommended by the AMA/Specialty Society Relative Value Unit Scale Update Committee (RUC) process. The study shall examine (and make recommendations on) how to improve accuracy in pricing the mix of physicians' services and such process could improve value weighting as new services become available.

(b) REPORT.—The Secretary shall provide for completion of the study under subsection (a) by January 1, 2010, and shall provide for a report to Congress on the results of the study.

SEC. 306. STUDY OF REPORTING REQUIREMENTS ON HEALTH CARE DISPARITIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall provide for a study of health care disparities in high-risk health condition areas and minority communities about the impact reporting requirements may have on physician penetration in such communities.

(b) REPORT.—The Secretary shall provide for the completion of the study by not later than January 1, 2011, and shall submit to Congress a report on the study upon its completion.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. ACCELERATION OF NATIONWIDE IMPLEMENTATION OF AUDIT CONTRACTOR PROGRAM.

Section 1893(h)(3) of the Social Security Act (42 U.S.C. 1395ddd(h)(3)), as added by section 302(a) of the Medicare Improvements and Extension Act of 2006 (division B of Public Law 109–432), is amended by striking "January 1, 2010" and inserting "January 1, 2008".

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